

Message Text

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C O N F I D E N T I A L JAKARTA 0928

STADIS//////////

E.O. 11652: GDS
TAGS: PINS, ID
SUBJECT: WAIVER OF INDONESIAN BANK SECRECY LAWS

REF: STATE 14559

1. WE ARE POUCHING EA/TIMBS COPY OF ENGLISH LANGUAGE
VERSION OF LAW NO. 14/1967 ON MAINPOINTS OF BANKING WHICH
IS BASIC BANKING LEGISLATION FOR INDONESIA.

2. LAW NO. 14 DOES CONTAIN A BANKING SECRECY ARTICLE
AND A PROVISION FOR EXCEPTIONS TO THAT ARTICLE FOR TAX
INVESTIGATIONS AND CRIMINAL PROSECUTIONS. WE DO NOT YET
HAVE INDONESIAN LANGUAGE COPY OF LAW BUT FULL TEXT OF
THE TWO RELEVANT ARTICLES AS TRANSLATED BY THE WARTA
ECONOMIC NEWS SERVICE FOLLOWS:

BEGIN TEXT:

ARTICLE 36

BANKS MAY NOT GIVE REFERENCE ON THE FINANCIAL STATUS
OF THEIR CLIENTS REGISTERED AT THE SAID BANKS AND
OTHER MATTERS WHICH SHOULD BE KEPT SECRET BY THE BANK
ACCORDING TO THE TRADITIONS OR WORLD BANKING, EXCEPT
FOR CASES AS STIPULATED IN THIS ACT.

ARTICLE 37

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(1) MINISTER OF FINANCE IS COMPETENT TO INSTRUCT
THE BANK, IN WRITTEN FORM, TO GIVE REFERENCE AND TO
SHOW TO TAX OFFICERS BOOKS, WRITTEN PROOFS OR LETTERS
OF A CLIENT FOR TAX PURPOSES. THE SAID INSTRUCTION
IS TO SPECIFY THE NAME OF THE CLIENT TAX PAYER, WHOSE
REFERENCES ARE NEEDED.

(2) FOR THE INTEREST OF A TRIAL IN A CRIMINAL

CASE, THE MINISTER OF FINANCE MAY GIVE PERMISSION TO THE PROSECUTOR/JUDGE TO GET FROM THE BANK REFERENCES ON THE FINANCIAL STATUS OF THE SUSPECTED/ACCUSED. THE SAID PERMISSION IS TO BE GIVEN IN WRITTEN FORM ON THE REQUEST OF THE ATTORNEY GENERAL, IF IT IS THE PROSECUTOR WHO NEEDS THE REFERENCES AND ON THE REQUEST OF THE CHAIRMAN OF THE SUPREME COURT OF JUSTICE, IF IT IS THE JUDGE WHO NEEDS THE SAID REFERENCES.

IF THE PROSECUTOR NEEDS THE REFERENCES, THE NAME OF THE SUSPECTED, THE REASONS FOR ASKING FOR REFERENCES AND THE CORRELATION BETWEEN THE CRIMINAL CASE CONCERNED AND THE REQUESTED REFERENCES SHALL BE SPECIFIED.
END TEXT.

3. BANKING OFFICIALS TELL US THAT INDONESIAN INTERPRETATION OF SECRECY PROVISION IS FAIRLY BROAD ALTHOUGH THEY MAINTAIN PRINCIPAL DIFFERENCE BETWEEN BANKING SECRECY HERE AND IN THE U.S. IS NOT SO MUCH THE BROADNESS OF INDONESIAN INTERPRETATION AS IT IS THE NARROWNESS OF THE WAIVER PROVISION. WHEREAS IN U.S. A NUMBER OF INSTITUTIONS HAVE LEGITIMATE POWERS TO SUBPOENA BANK RECORDS, IN INDONESIA IT IS APPARENTLY LIMITED EXCLUSIVELY TO MINISTER OF FINANCE.

4. PRIVATE BANKING SOURCES SAY WAIVER PROVISION IS RARELY USED IN INDONESIA. DEPARTMENT OF FINANCE
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OFFICIAL CONFIRMED THIS AND SAID HE COULD NOT RECALL ANY INSTANCE IN WHICH A FOREIGN GOVERNMENT HAD REQUESTED WAIVER OF SECRECY PROVISIONS TO GAIN ACCESS TO BANK RECORDS IN INDONESIA. THIS FINANCE OFFICIAL STATED THAT PROCEDURE WE WOULD HAVE TO FOLLOW WOULD BE OFFICIAL LETTER CLEARLY STATING REASONS FOR REQUEST FROM THE AMBASSADOR TO MINISTER OF FINANCE WITH COPIES TO GOVERNOR OF BANK INDONESIA AND ATTORNEY GENERAL. ALTHOUGH HE DID NOT SAY SO, OUR EXPERIENCE WOULD LEAD US TO BELIEVE THAT OBTAINING NECESSARY PERMIT WOULD LIKELY BE A TIME-CONSUMING TASK.

5. HOLZER CASE APPEARS FAIRLY STRAIGHTFORWARD AND WE WOULD NOT OBJECT TO INITIATING REQUEST FOR WAIVER. BEFORE WE COULD DO SO, HOWEVER, WE WOULD NEED SPECIFICS. ALSO, IN VIEW OF IMMINENCE OF HOLZER TRIAL, WE SERIOUSLY DOUBT WE COULD OBTAIN WAIVER WITHIN REQUIRED TIME FRAME.

6. SECOND CASE CITED REFTTEL, AS DEPARTMENT HAS NOTED, IS CONSIDERABLY MORE CONTROVERSIAL. WE WOULD THEREFORE LIKE MORE TIME TO CONSIDER CAREFULLY FULL

RAMIFICATIONS OF PROPOSAL. WILL ADVISE.
MASTERS

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